

## **Notice of Your Rights After Fee Arbitration**

(Revised October 5, 2001)

Your arbitration of attorney's fees has been decided. The arbitrator's award is enclosed. Please read the award carefully.

This notice will explain the rights you may have now that the arbitration is completed. To understand your rights, you must determine whether the award is **binding** or **non-binding**, which should be stated in the award.

If you are not satisfied with the award, you should follow the instructions below to protect your rights. If you are satisfied with the award, please see Part 1E below if your award is non-binding or Part 2C and D if your award was binding or has become binding. If you are unsure of your rights or have questions after reading this pamphlet, you should consult an attorney.

### **PART 1 - Rights After Non-Binding Arbitration**

If the arbitration award is non-binding, you may have a right to a trial in court. However, if you did not appear at your fee arbitration hearing, you will have to prove to the court that you had a good reason for not being there. If the court determines that your failure to appear was willful, you may not be entitled to a trial after arbitration.

#### **A. HOW LONG DO I HAVE TO ACT?**

If you want a trial in court, you must act within **30 days** after the date the arbitration award was **served** on you.

The **date the arbitration award was served** is printed on the Proof of Service attached to the award.

#### **B. HOW DO I GET A TRIAL IN COURT?**

You must file **documents** in the **proper court** within the 30 day limit.

#### **C. WHAT DOCUMENTS MUST I FILE? IN WHAT COURT MUST I FILE THEM?**

That depends upon whether a lawsuit about the fees has already been filed.

##### **(1) Yes - lawsuit already filed.**

If a lawsuit about the fees has already been filed, then you must file a "Rejection of Arbitration Award and Request for Trial" with the same court. The bar association does not provide this document. If the lawsuit

was filed in Superior Court, you may need a lawyer's help to file your "Rejection of Arbitration Award and Request for Trial." If the lawsuit was filed in Small Claims Court, you may discuss this with a Small Claims Court Advisor. The Small Claims Court has Judicial Counsel forms to use, (forms SC-100 and SC-101) for this purpose.

**(2) No - lawsuit not yet filed.**

If no lawsuit about the fees has been filed yet, then you must file your own **lawsuit** in the **proper court**.

**(a) Proper Court.**

The Small Claims Court is the proper court if the amount in dispute is \$5,000 or less, otherwise, the Superior Court is the proper court.

**(b) How to file a lawsuit.**

A lawsuit is brought by filing a "complaint" with the court. A complaint is a legal document that tells the court what you want and why you are entitled to it. The bar association **does not** have such forms. You may need a lawyer's help to file your complaint if you are filing in the Superior Court. To reject an award, you still must file a complaint, even if you are not seeking monies from the other party.

**D. DO I RISK ANYTHING BY FILING FOR A TRIAL IN COURT?**

Yes. The "losing party" in court **may** be ordered to pay the prevailing party's attorney's fees and costs. You will be the "losing party" if you do no better in court than you did in the arbitration.

**E. WHAT IF I AM SATISFIED WITH THE AWARD?**

If you are satisfied with the award, wait 30 days. The award will become binding automatically if the other party does not file for a trial in court within the 30 day period after service of the award. Once the award becomes binding, see Part 2C and D to find out what to do next.

**PART 2 - Rights After Binding Arbitration**

**A. WHAT ARE MY RIGHTS IF THE ARBITRATION AWARD IS BINDING?**

If the arbitration award is **binding**, you must abide by it. There is no appeal from a binding award. Even so, a binding award can be corrected or "vacated" (overturned) by a court, but only on limited grounds as set forth in Code of Civil Procedure section 1286.2 (see attached excerpts of the statute).

## **B. WHAT IF I AM DISSATISFIED WITH A BINDING AWARD?**

A court has the power to “vacate” (overturn) an arbitration award, but only on very narrow grounds. A court can also correct obvious mistakes in the award, such as an arithmetic error.

If you think you are entitled to correct or vacate the arbitration award, please follow the instructions below to protect your rights.

### **(1) What must I do to vacate or correct a binding arbitration award?**

You must file a **petition** in the **proper court**.

### **(2) How long do I have to act?**

- (a) If you want to correct or vacate the award, you must file a petition within 100 days after the date the arbitration award was served. The date of service is on the proof of service attached to the award.
- (b) However, if you wish to petition to vacate or correct the award but receive notice that the other side has filed a petition to confirm the award, **you no longer have 100 days to file your petition**. You must then respond by filing, in a timely manner, your opposition to the petition to confirm the award and your petition to vacate/correct the award.

### **(3) What is a petition?**

A **petition** is a legal document that tells the court what you want and why you are entitled to it. The bar association **does not** provide forms for these petitions. You may need a lawyer’s help to prepare your petition.

### **(4) In what court do I file my petition?**

That depends upon whether a lawsuit about the fees has already been filed.

- (a) **Yes - lawsuit already filed.**

If a lawsuit about the fees has already been filed, you will file your petition to vacate or correct the award with that same court.

- (b) **No - lawsuit not yet filed.**

If no lawsuit about the fees has been filed, then you will file your petition with the court that

has jurisdiction over the amount of the arbitration award. The Small Claims Court is the proper court if the amount of the arbitration award is \$5,000 or less, otherwise, the Superior Court is the proper court.

**(5) Do I risk anything by petitioning the court to correct or vacate the award?**

Yes. If you lose, the court may order you to pay the prevailing party's attorney's fees and costs.

**C. WHAT IF I AM SATISFIED WITH THE ARBITRATION AWARD AND AM OWED MONEY?**

If the arbitration award grants you a refund, you should write the other party a letter and demand payment. If you are not paid, and you are the **client**, you have the right to ask the State Bar to assist you in enforcing the award. If you want the State Bar to assist you and:

- (1) 100 days have passed from service of the award and the award is binding, or
- (2) the award has become a final judgment following a trial after arbitration or a petition to vacate, correct or confirm the award, and
- (3) The award was served less than four years ago, you may request a form for enforcement of the award by contacting the following office:

The State Bar of California  
Mandatory Fee Arbitration Program  
180 Howard Street, 6<sup>th</sup> Floor  
San Francisco, CA 94105  
(415) 538-2020

You will be required to complete a State Bar "Client's Request for Enforcement of an Arbitration Award" form. The attorney on the other side will be given an opportunity to respond to your request and agree to a payment plan. He or she will also be able to ask for an opportunity to prove that he or she is not responsible for paying you or is financially unable to pay the award.

The State Bar Court may place the opposing attorney on involuntary inactive status until the award is paid. An attorney on inactive status is not entitled to practice law. (Business and Professions Code section 6203(d)). Any party may contact the State Bar at the address above for a copy of the rules that govern this procedure.

Any party who is owed money has the right to request court orders allowing that party to take property or money from the other party's paycheck, and/or bank accounts. To get those court orders, you must

first obtain a judgment confirming the arbitration award.

**(1) How do I obtain a judgment confirming the arbitration award?**

To obtain a judgment confirming the arbitration award, whether it was the result of a hearing or a stipulated agreement, you must **petition** for confirmation with the **proper court**.

**(a) What is a petition for confirmation?**

A petition for confirmation is a legal document that tells the court what you want and why you are entitled to it. The bar association **does not** have forms for these petitions. You may need a lawyer's help to prepare your petition.

**(b) What is the proper court?**

That depends on the amount you are owed. If it is \$5,000 or less, the Small Claims Court is the proper court, otherwise, the Superior Court is the proper court.

**(2) How long do I have to file my petition for confirmation?**

You must file your petition for confirmation within four years of the date the arbitration award is served on you. That date appears on the proof of service attached to the award.

**(3) What are my rights after the arbitration award is confirmed?**

When the arbitration award is confirmed, it becomes a judgment of the court. Once you have a judgment, as a judgment creditor, you have a right to "execute" the judgment. That means you may be entitled to court orders allowing you to collect your money by garnishing the other party's paycheck or bank accounts, and/or placing a lien on his or her property. The court has forms to use when you execute. The bar association has **no such forms**.

**D. WHAT IF I AM SATISFIED WITH THE ARBITRATION AWARD AND I OWE MONEY?**

If you owe money, pay it. If you do not pay the award, the other party has a right to obtain a judgment confirming the award and collect the judgment.

Attached are excerpts from the California Business and Professions Code and the California Code of Civil Procedure. The first excerpt, from the Business and Professions Code, is the law that governs fee arbitrations between attorneys and their clients, as well as the authority to request a trial following non-binding arbitration. The second excerpt, from the Code of Civil Procedure, sets forth the law on confirming, vacating or correcting arbitration awards.

You can find further information at your county law library or online at [www.calbar.org](http://www.calbar.org).

**WATCH THOSE DEADLINES!**

The deadlines we have explained in this notice are important. You can lose certain rights if you do not act before the deadlines pass.